

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

FRANCISCO MERINO,
Plaintiff,

v.

VIVIAN VUONG,
Defendant.

No. 2:21-CV-0826-KJM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. Pending before the Court are Plaintiff's motions, ECF Nos. 11 and 12, for the appointment of counsel.

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims on his own in light of the complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because “Terrell demonstrated sufficient writing ability and legal knowledge to
3 articulate his claim. The facts he alleged and the issues he raised were not of substantial
4 complexity. The compelling evidence against Terrell made it extremely unlikely that he would
5 succeed on the merits.” Id. at 1017.

6 In the present case, the Court does not at this time find the required exceptional
7 circumstances. Plaintiff has made two (2) motions for appointment of counsel. See ECF Nos. 11
8 and 12. Plaintiff moves for appointment of counsel because he does not have any primary or
9 secondary education, is blind in the left eye, has glaucoma in the right eye, and his primary
10 language is Spanish. See ECF Nos. 11 and 12.

11 However, despite the disabilities mentioned above, Plaintiff writes in full English
12 sentences with logical organization. See ECF Nos. 1-20. Plaintiff also provides some Eighth
13 Amendment analysis in his first amended complaint. See ECF No. 18. Plaintiff clearly
14 demonstrates sufficient writing ability and legal knowledge to articulate his claim. Plaintiff’s
15 alleged facts and the legal issues involved are not of substantial complexity—Plaintiff alleges he
16 was not treated for a medical condition in violation of the Eighth Amendment. The Court cannot
17 say that Plaintiff has established a particular likelihood of success on the merits at the present
18 stage of this case.

19 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s requests for the
20 appointment of counsel, ECF Nos. 11 and 12, are denied.

21
22 Dated: October 13, 2021



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE